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OFFICE OF PETITIONS

In re Application of :
Goda et al. : DECISION ON PETITION TO
Application No. 09/980,880 : WITHDRAW HOLDING OF
Filed: 3 September, 2002 : ABANDONMENT
Attorney Docket No. MAT-8189US :

This is a decision on the "PETITION UNDER 37 CFR 1.137 TO WITHDRAW HOLDING OF ABANDONMENT," filed on 24 November, 2006, which is treated as a petition to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit an Appeal Brief in response to the Notice of Panel Decision from Pre-Appeal Brief Review, mailed on 15 March, 2006, which set a one (1) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 22 September, 2006.

Petitioners assert that the Notice mailed on 15 March, 2006, was never received.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When

Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support, the petition includes a statement from the practitioner, Lawrence E. Ashery, stating that the Notice was not received by the practitioner, and attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received. A copy of counsel's docket report where the non-received Notice action would have been entered had it been received and docketed is attached.

The petitioner has made a sufficient showing of nonreceipt of the Notice. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

It is noted that applicant has filed an Appeal Brief in reply to the Notice mailed on 15 March, 2006, with the present petition. As such the Notice will not be remailed.

As no petition fee is due, the fee submitted with the petition will be refunded to counsel.

The application file is being referred to Technology Center Art Unit 1745 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions